

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

KELLY L. MCCOY,

No. 6:13-cv-01616-HU

Plaintiff,

**FINDINGS AND
RECOMMENDATION**

v.

CAROLYN W. COLVIN, Commissioner
of Social Security,

Defendant.

HUBEL, Magistrate Judge:

This social security case was originally filed by Plaintiff Kelly McCoy ("Plaintiff") on September 13, 2013, challenging the denial of her claim for supplemental security income benefits under Title XVI of the Social Security Act. After Plaintiff's counsel filed a twenty-page opening brief on July 3, 2014, the Commissioner of the Social Security Administration ("SSA" or "Commissioner") stipulated that the above-captioned case should be reversed and remanded for a new hearing and development of the record. Judge Michael Simon entered an order to that effect on September 26, 2014. Now before the Court is Plaintiff's stipulated application

1 (Docket No. 28) for attorney's fees pursuant to the Equal Access to
2 Justice Act ("EAJA"), 27 U.S.C. § 2412.

3 The EAJA requires an award of attorney's fees to the
4 prevailing plaintiff in a social security case, "unless the court
5 finds that the position of the United States was substantially
6 justified or . . . special circumstances make an award unjust." 28
7 U.S.C. § 2412(d). While

8 the EAJA creates a presumption that fees will be awarded
9 to a prevailing party, Congress did not intend fee
10 shifting to be mandatory. The decision to deny EAJA
11 attorney's fees is within the discretion of the court. A
12 social security claimant is the 'prevailing party'
13 following a sentence-four remand pursuant to 42 U.S.C. §
405(g) either for further administrative proceedings or
for the payment of benefits. Fee awards under the EAJA
are paid to the litigant, and not the litigant's
attorney, unless the litigant has assigned his or her
rights to counsel to receive the fee award.

14 *Frazier v. Colvin*, No. 3:13-cv-00673-SI, 2014 WL 1571890, at *1 (D.
15 Or. Apr. 17, 2014) (internal citations omitted).

16 Plaintiff seeks an award of attorney's fees in the amount of
17 \$5,486.10 based on 28.95 hours of work (e.g., 4.75 hours multiplied
18 by a 2013 applicable statutory maximum hourly rate of \$187.02, plus
19 24.20 hours multiplied by a 2014 applicable statutory maximum
20 hourly rate of \$189.99). The Commissioner stipulates to the
21 reasonableness of the requested fees. The Court has reviewed
22 Plaintiff's motion and agrees with the parties that the EAJA
23 petition is proper and the amount requested is reasonable.

24 Accordingly, Plaintiff's application (Docket No. 28) should be
25 GRANTED. Plaintiff should be awarded \$5,486.10 in attorney's fees
26 under 28 U.S.C. § 2412. "Payment of this award shall be paid via
27 check made payable to Plaintiff and mailed to Plaintiff's attorneys
28 at Harder, Wells, Baron & Manning, P.C., 474 Willamette Street,

1 Eugene, Oregon 97401. Pursuant to *Astrue v. Ratliff*, [560 U.S. 586
2 (2010),] the award shall be made payable to Plaintiff's attorneys
3 if the Commissioner confirms that Plaintiff owes no debt to the
4 government through the federal treasury offset program."
5 (Settlement & Stipulated Mot. at 1.)

6 **SCHEDULING ORDER**

7 The Findings and Recommendation will be referred to a district
8 judge. Objections, if any, are due **January 2, 2015**. If no
9 objections are filed, then the Findings and Recommendation will go
10 under advisement on that date. If objections are filed, then a
11 response is due **January 19, 2015**. When the response is due or
12 filed, whichever date is earlier, the Findings and Recommendation
13 will go under advisement.

14 Dated this 15th day of December, 2014.

15 /s/ Dennis J. Hubel

16

DENNIS J. HUBEL
17 United States Magistrate Judge
18
19
20
21
22
23
24
25
26
27
28